



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

COPY

06 CV-0957

U.S. DISTRICT COURT - N.D. OF N.Y.
FILED
AUG 08 2006
AT _____ O'CLOCK _____
Lawrence K. Baerman, Clerk - Syracuse

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK FOUR, INC.,

Defendant.

COMPLAINT

Civil Action No.

GLS / DRH

The United States of America, by authority of the Attorney General of the United States and through the undersigned counsel, acting at the request of the Regional Administrator of the United States Environmental Protection Agency for Region II ("EPA"), brings this action and hereby alleges as and for its Complaint against Defendant, as follows:

NATURE OF THE ACTION

1. This is a civil action under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607, as amended ("CERCLA"), for recovery of response costs incurred in connection with the release or threatened release of hazardous substances at or from the Skybel Tissue Mills Site located in Greenwich, Washington County, New York (the "Site").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and pursuant to 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), as the actual or threatened releases of hazardous substances that give rise to the claims occurred in this judicial district.

DEFENDANT

4. Defendant Mark Four, Inc. ("Mark Four"), is a privately held corporation organized pursuant to and existing under the laws of the State of New York, with a place of business located in Greenwich, New York. Mark Four's sole officer, shareholder and employee is Marvin Ferris, a resident of Greenwich, New York. On March 10, 1988, NYCON Capital Corporation assigned the mortgage on the property comprising the Site to Mark Four, Inc. At some point after 1988, Mark Four acquired the deed to the property.

GENERAL ALLEGATIONS

5. The Site consists of approximately nine acres of land located at 52 John Street in the town of Greenwich, New York. To the north, east and west of the Site are residences and the commercial district of Greenwich. The Site is bordered on the south by the Batten Kill River, a major recreational waterway that feeds into the Hudson River. Defendant Mark Four is the current owner of the Site.

6. Paper mill operations were conducted at the Site from the late 1880s through approximately 1984. After a fire in 1984 destroyed much of the main processing building, the operator at that time, Skybel Tissue Mills, Inc., ceased mill operations and ran a paper warehouse and distribution operation out of one of the other buildings on the Site.

7. A second fire at the Site, in August 2002, destroyed the warehouse and

operations at the Site ceased. As a result of the August 2002 fire, the Site came to the attention of the New York State Department of Environmental Conservation ("NYSDEC"), which discovered improperly stored chemicals and other hazardous materials at the Site. On October 2, 2002, NYSDEC submitted a written request to EPA to conduct a removal assessment of the Site.

8. EPA conducted an Expedited Removal Assessment of the Site on October 15-17, 2002. During this Assessment, EPA discovered, among other things, full and partially full drums of chemicals in the main processing building leaking their contents onto the ground and on floors; various sized chemical containers in severely deteriorated condition in the basement of the secondary processing building; numerous 55-gallon drums of chemicals improperly packed into 85-gallon drums that contained other materials; and decommissioned electrical transformers, later confirmed to contain polychlorinated biphenyl ("PCB") fluids, located within 20 feet of the Batten Kill. In addition, EPA found that the buildings at the Site were in various states of disrepair that included full or partially collapsed roofs, rotting walls and floors, and missing doors and windows. There was no functioning fire detection, alarm or suppression system, and no security system or signs to deter intruders.

9. Due to the significant danger posed to the community by the release or threatened release of hazardous substances at or from the Site, the Acting Director of EPA's Emergency and Remedial Response Division gave oral permission on October 18, 2002, for an emergency action to stabilize the Site.

10. On October 21, 2002, EPA temporarily stabilized the Site by overpacking

deteriorating chemical containers into sound containers and moving these new containers into the only portion of a building on the Site with a concrete floor. EPA then secured the doors and windows to this building to deter intruders from gaining access.

11. On December 17, 2002, the Acting Director of EPA's Emergency and Remedial Response Division approved an Action Memorandum for a time-critical removal action at the Site.

12. From January 17, 2003, through May 9, 2003, EPA conducted CERCLA removal activities at the Site. Removal activities included initiating security measures such as fencing and warning signs; staging chemical containers found throughout the Site in a secure building; testing and removing contaminated soil, storage tanks, transformers and other debris; sampling and analyzing wastes for disposal; bulking liquid and solid wastes by compatible waste streams; and preparing waste streams for shipment. Over 150 drums of hazardous wastes were transported off-Site for disposal. Further, due to the close proximity of the electrical transformers to the Batten Kill River, EPA decided it was too risky to drain the PCB fluids on the Site, and so disconnected the transformers and lifted them by crane over the main processing building and onto a truck for shipping off-Site.

13. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. Defendant, Mark Four, is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

15. At times relevant to this action, there were releases or threats of releases of hazardous substances into the environment at or from the Site within the meaning of Sections

101(14), 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(22) and 9607(a), and 40 C.F.R. § 302.4.

16. The releases or threatened releases of hazardous substances at or from the Site caused EPA to incur "response costs," as defined by Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a).

17. EPA has incurred at least \$861,345.08 in response costs at the Site.

18. The response costs were incurred in a manner consistent with the National Contingency Plan, 40 C.F.R. Part 300.

CLAIM FOR RELIEF
AGAINST DEFENDANT MARK FOUR

19. Paragraphs 1 through 18, inclusive, are repeated and realleged as though fully set forth herein.

20. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

- (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section –
- (1) the owner and operator of a vessel or a facility,
 - (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
 - (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
 - (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which

causes the incurrence of response costs, of a hazardous substance, shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

21. Pursuant to Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1)

and (2), Mark Four is liable for the response costs incurred and to be incurred by the United States at the Site.

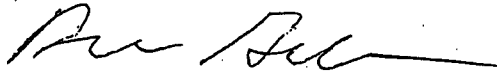
PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

1. Enter judgment against Mark Four and in favor of the United States, for past unreimbursed response costs incurred by the United States in connection with the Site, in an amount totaling at least \$861,345.08, plus interest and enforcement costs.
2. Grant such other and further relief as the Court may deem just and proper.

Dated: 8/7/06

Respectfully submitted,



BRUCE GELBER
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice